

FIRST DIVISION  
September 30, 2011

No. 1-09-3282

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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6030 SHERIDAN ROAD, LLC, @ PROPERTIES, LLC,	)	Appeal from the
GRADY CAMPBELL, INC., JOHN MULLEN	)	Circuit Court of
and DAVID PISOR,	)	Cook County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 02 L 2346
	)	
ANDREW WRIGHT, JAMES WRIGHT	)	
and WRIGHT MANAGEMENT, LLC,	)	Honorable
	)	Daniel J. Pierce,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

¶ 1 **HELD:** We affirmed the grant of summary judgment for defendants on plaintiffs' tortious interference and equitable accounting counts.

¶ 2 Plaintiffs, 6030 Sheridan Road, LLC, @ Properties, LLC, Grady Campbell, Inc., John Mullen and David Pisor filed a verified-amended complaint against defendants, Andrew Wright, James Wright, and Wright Management, LLC, alleging tortious interference with a business relationship and seeking injunctive relief and an accounting. Plaintiffs appeal from the order of the circuit court

granting summary judgment in favor of defendants. We affirm.

¶ 3 I. The Limited Liability Company Act

¶ 4 This case involves a limited liability company (LLC). An LLC is a hybrid form of doing business that combines the advantages of a corporation's limitation on personal liability with a partnership's pass-through tax treatment (*i.e.*, the LLC pays no entity level state or federal income tax, meaning that income, gains, losses, and deductions pass-through to investors.) See Spudis and Gravelle, *The Illinois Limited Liability Company Act*, 81 Ill. B.J. 352 (1993); Brigham, *Just How Limited is the Illinois Limited Liability Company*, 26 S. Ill. U.L.J. 53 (2001).

¶ 5 LLCs are regulated by the Limited Liability Company Act (the Act) (805 ILCS 180/1-1 *et seq.* (West 2002)). The Act provides that an LLC shall have one or more members and is a legal entity distinct from its members. 805 ILCS 180/5-1 (b), (c) (West 2002). An LLC may elect managers and appoint agents, define their duties, and fix their compensation. 805 ILCS 180/1-30 (10) (West 2002). Section 15-1 of the Act provides for either member-managed companies or manager-managed companies. 805 ILCS 180/15-1 (West 2002). A member owes a member-managed company and its other members fiduciary duties of loyalty and care. 805 ILCS 180/15-3(a), (b), (c) (West 2002).<sup>1</sup> Similarly, a manager owes a manager-managed company and its other managers fiduciary duties of loyalty and care. 805 ILCS 180/15-3 (g)(2) (West 2002). Section 10-10 of the Act provides:

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<sup>1</sup>Section 15-3 was amended in 2007 to limit the duty of care to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." P.A. 95-331, §1225, eff. Aug. 21, 2007. The 2007 amendment is not applicable here, where the conduct at issue occurred in 2001.

"(a) Except as otherwise provided in subsection (d) of this Section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

\* \* \*

(d) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

- (1) a provision to that effect is contained in the articles of organization; and
- (2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision. 805 ILCS 180/10-10 (West 2002).

¶ 6 II. Procedural Background

¶ 7 In their verified-amended complaint, plaintiffs alleged that defendants, Andrew Wright and his son, James Wright, are individuals doing business in Illinois. Since 2001 to the present date Wright Management, LLC, has owned, managed, maintained, and otherwise controlled a residential apartment building located at 6030 Sheridan Road in Chicago. The parties agree on appeal that Andrew Wright was the principal owner and an officer of Wright Management, LLC.

¶ 8 Plaintiffs alleged that, in December 2000 and January 2001, Andrew Wright discussed with John Mullen and David Pisor, the idea of converting the apartment units at 6030 Sheridan Road into condominium units and selling the units to the public. Andrew Wright expressed interest in cooperating with Mr. Mullen and Mr. Pisor because they had extensive experience and expertise in

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condominium development. In pursuit of the project, Andrew Wright, Mr. Mullen and Mr. Pisor formed 6030 Sheridan Road, LLC, in February 2001, "to be used as a vehicle" for converting and selling the condominium units. Andrew Wright, James Wright, Mr. Mullen, and Mr. Pisor were all members of 6030 Sheridan Road, LLC, and they all agreed that the apartment building would be sold to 6030 Sheridan Road, LLC, which would then sell the converted condominium units. To implement the condominium conversion project, the parties entered into a written real estate development agreement, whereby Wright Management, LLC, agreed to sell the residential apartment building to Sheridan Road, LLC, which would convert the apartment units into condominium units to be sold to the public. Andrew Wright signed the real estate development agreement on behalf of Wright Management, LLC; Mr. Pisor, Mr. Mullen, and James Wright signed the agreement on behalf of 6030 Sheridan Road, LLC.

¶ 9 Plaintiffs alleged that, in January, February, and March 2001, 6030 Sheridan Road, LLC, negotiated with contractors for services necessary to implement the condominium conversion project. On January 15, 2001, 6030 Sheridan Road, LLC, executed a contract with Grady Campbell, Inc. to obtain advertising materials for the upcoming sales campaign. Mr. Pisor signed the contract on behalf of Sheridan Road, LLC. On March 5, 2001, 6030 Sheridan Road, LLC, executed a contract with a real estate broker, @ Properties, LLC, to facilitate the sale of the condominium units. David Pisor signed the contract on behalf of 6030 Sheridan Road, LLC. In March 2001, the residents of the apartments at 6030 Sheridan Road were given notice informing them of the opportunity to buy condominium units.

¶ 10 Plaintiffs alleged that, at all relevant times, Andrew Wright had a personal interest in Aadus

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Bancorp and insisted that all purchasers of condominium units be referred to Aadus Bancorp for mortgages. Plaintiffs alleged that "[r]eferral of purchasers to Aadus Bancorp resulted in personal financial gain for [Mr. Wright] through brokerage fees received for brokering, processing and/or selling the mortgages granted on the sold condominium units. At all times relevant herein Aadus Bancorp was unable to provide services necessary and required by [6030 Sheridan, LLC]. In particular, Aadus Bancorp offered prospective buyers of condominium units mortgage rates that were above the market rates. As one of the results, buyers sought alternate lenders, that were unfamiliar with the conversion procedure. Because of the lack of familiarity of outside lenders, closings would not take place even if the mortgage applications would have been approved."

¶ 11 Plaintiffs attached several emails to their verified- amended complaint. The first email, dated March 11, 2001, was written by Mike Golden, an agent with @ Properties, LLC, and directed to David Pisor. In that email, Mr. Golden expressed his concerns that Aadus Bancorp has no real experience with condominium conversions and that the Aadus Bancorp personnel were unreliable and lacking in interpersonal skills.

¶ 12 The second email, dated March 12, 2001, was a follow-up by Mike Golden to David Pisor in which he criticized Aadus Bancorp for passing buyers from one mortgage agent to another and for not offering buyers better programs and rates.

¶ 13 The third email, dated April 3, 2001, was written by Andrew Wright and directed to David Pisor and John Mullen. In that email, Mr. Wright stated that the sales people at @ Properties, LLC, are "nice enough, but not anything special" and that \$800,000 in sales commissions could be saved by terminating the contract with @ Properties, LLC, based on Mike Golden's failure to put in 40-

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hour work weeks as required by the contract. Mr. Wright further stated his willingness to pay @ Properties, LLC, \$15,000 to \$20,000 for a complete release of liability. He asked Mr. Pisor and Mr. Mullen to discuss his suggestions at the next "partners meeting."

¶ 14 The fourth email, dated April 4, 2001, was written by Andrew Wright and was directed to David Pisor. In that email, Mr. Wright referenced a partners' meeting he had been unable to attend at which Mr. Pisor expressed his concern about Aadus Bancorp's ability to handle the loans and his desire to bring in another mortgage broker. Mr. Wright stated his belief that the programs Aadus Bancorp had put together were "impressive" and were at least the equal of programs offered by entities other than Aadus. Mr. Wright further stated that he does not want @ Properties, LLC, to be the real estate marketing broker, but that he had removed his objections to @ Properties, LLC, in exchange for Mr. Pisor's agreement that Aadus Bancorp would be the only mortgage company. Mr. Wright stated that Mike Golden and @ Properties, LLC, were not 100% supportive of Aadus Bancorp, and he would seek to fire them if he obtained "concrete evidence" that they had actively directed purchasers to other mortgage companies.

¶ 15 The fifth email, dated April 10, 2001, was written by Mr. Pisor to Andrew Wright (and sent on to Mr. Mullen). In that email, Mr. Pisor stated that he had made no agreement regarding Aadus Bancorp and @ Properties, LLC, and that the contract required two lenders on site through the mass closing. Mr. Pisor stated that Mr. Golden is one of the best real estate agents in the city and @ Properties, LLC, is the "number one broker in the city." Mr. Pisor asked Mr. Wright to refrain from sending "inflammatory emails."

¶ 16 Plaintiffs alleged that, on or about April 25, 2001, Andrew Wright and Wright Management,

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LLC, changed the locks on the building at 6030 Sheridan Road and denied members of 6030 Sheridan Road, LLC, access thereto. Plaintiffs attached a copy of an April 27, 2001, letter addressed to Mr. Pisor and Mr. Mullen from attorneys representing Wright Management, LLC, which stated that it was terminating the real estate development agreement with 6030 Sheridan Road, LLC.

¶ 17 Plaintiffs alleged that, as a result of Wright Management, LLC's, termination of the real estate development contract, 6030 Sheridan Road, LLC, was unable to complete its obligations to Grady Campbell, Inc. and to @ Properties, LLC, and, therefore, breached its contracts with Grady Campbell, Inc. and with @ Properties, LLC. Plaintiffs further alleged that, in May 2001, Wright Management, LLC, began selling individual condominium units to willing buyers.

¶ 18 In count I of their verified-amended complaint, plaintiffs sought to enjoin Wright Management, LLC, from selling the condominium units located at 6030 Sheridan Road. In count II, plaintiffs requested that Andrew Wright account for any profits, losses, and expenses incurred by Wright Management, LLC, in selling the condominium units located at 6030 Sheridan Road. In count III, plaintiffs requested that James Wright account for any profits, losses, and expenses incurred by Wright Management, LLC, in selling the condominium units located at 6030 Sheridan Road.

¶ 19 In count IV, plaintiffs alleged that Andrew Wright tortiously interfered with the business relationship between 6030 Sheridan Road, LLC, and Wright Management, LLC, by: instructing persons in control of the building located at 6030 Sheridan Road to change door locks and prevent the implementation of the contract between Wright Management, LLC, and 6030 Sheridan Road, LLC; instructing persons in control of access to the premises at 6030 Sheridan Road to deny access

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to the premises to Mr. Mullen and Mr. Pisor and to personnel of @ Properties, LLC, and their respective agents; otherwise instructing persons in control to restrict access to the premises at 6030 Sheridan Road in order to prevent the implementation of the contract between Wright Management, LLC, and 6030 Sheridan Road, LLC; and insisting that Aadus Bancorp continue to be the exclusive mortgage provider despite its failures to perform under the terms of the agreement with 6030 Sheridan Road, LLC.

¶ 20 In counts V and VI, plaintiffs similarly alleged that, by these same actions, Andrew Wright tortiously interfered with the business relationship between: 6030 Sheridan Road, LLC, and @ Properties, LLC; and 6030 Sheridan Road, LLC, and Grady Campbell, Inc.

¶ 21 The circuit court dismissed count I, and that count is not before us on this appeal. Defendants filed a motion for summary judgment with respect to counts II through VI. Defendants argued that, Andrew Wright, as principal owner of Wright Management, LLC, and as a member of 6030 Sheridan Road, LLC, was a party to all the contracts which 6030 Sheridan Road, LLC, entered into with: Wright Management, LLC; with @ Properties, LLC; and with Grady Campbell, Inc. Noting that a party cannot tortiously interfere with its own contract (*Douglas Theatre Corp. v. Chicago Title & Trust Co.*, 288 Ill. App. 3d 880, 884 (1997)) and that "a party cannot tortiously interfere with the business expectancy that it created by that contract" (*Bass v. SMG, Inc.*, 328 Ill. App. 3d 492, 503-04 (2002)), defendants argued that the court should grant summary judgment in favor of Andrew Wright on the tortious interference counts IV through VI.

¶ 22 Defendants alternatively argued that the court should grant summary judgment in favor of Andrew Wright on the tortious interference counts because he was privileged to interfere with the

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aforementioned contracts while acting in accordance with his business judgment to further the interests of Wright Management, LLC. See *HPI Healthcare Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 157 (1989) (recognizing privilege in intentional interference with contract cases where defendant was using his business judgment and discretion on behalf of his corporation.) Defendants argued that the privilege should apply not only in cases involving corporations, but also cases involving LLCs.

¶ 23 Defendants further argued that where the conduct of a defendant in an interference with contract action was privileged, plaintiffs bear the burden of both pleading and proving that the defendant's conduct was unjustified or malicious. *Id.* at 156. Defendants argued that plaintiffs had failed to plead or prove any facts that Andrew Wright's actions in interfering with the aforementioned contracts which 6030 Sheridan Road, LLC, entered into with Wright Management, LLC, with @ Properties, LLC, and with Grady Campbell, Inc. involved malice or were unjustified. Specifically, defendants argued that Andrew Wright's actions in interfering with 6030 Sheridan Road, LLC's contract with @ Properties, LLC, was justified because @ Properties, LLC, had "grossly mismanaged its role of marketing the properties." Defendants contended that @ Properties, LLC, had written contracts for prospective buyers that were unintelligible and that did not specify whether a buyer was purchasing a unit "as is" or a unit with deluxe upgrades. Further, @ Properties, LLC, had written contracts for prospective buyers who were not tenants of the property at 6030 Sheridan Road, before current tenants were allowed the option to purchase their unit. Also, of the 35 contracts entered into by @ Properties, LLC, with prospective buyers, a substantial number were for prices below the list price established by members of 6030 Sheridan Road, LLC. In addition, many of the

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contracts were signed by an individual on behalf of 6030 Sheridan Road, LLC, who was not a member of that company and without authority. Finally, @ Properties, LLC, created and distributed a list of building amenities that was inaccurate, such as the installation of new plumbing throughout the building, which was never planned or budgeted.

¶ 24 Defendants argued that Andrew Wright also was justified in interfering with Sheridan Road, LLC's contract with Grady Campbell, Inc. to produce media for marketing the condominiums. Defendants contended that the brochure prepared by Grady Campbell, Inc. was defective because its references to the sizes of the condominium units were inaccurate to a significant degree, sometimes by as much as 25%.

¶ 25 Defendants argued that, based on @ Properties, LLC's and Grady Campbell, Inc.'s alleged mismanagement of the marketing and advertising relating to the sale of the condominium units, Andrew Wright was justified in terminating the real estate development contract between Wright Management, LLC and Sheridan Road, LLC.

¶ 26 In support of their argument for summary judgment on the tortious interference counts, defendants attached the deposition testimony of Andrew Wright. Only a portion of Andrew Wright's deposition testimony is contained in the record on appeal; plaintiffs make no argument for reversal based on the failure to include the entire deposition testimony in the record and so have waived any issue relating thereto. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). In that portion of the deposition testimony contained in the record on appeal, Andrew Wright testified that the notice to tenants provided by @ Properties, LLC, was defective in that it did not advise the 6030 Sheridan Road tenants of their right to buy their units and did not properly disclose the time period for their right

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of first refusal. Andrew Wright also testified that Grady Campbell, Inc. was brought in "on a noncompetitive basis" by David Pisor, and that Grady Campbell, Inc.'s advertising materials were "defective in that they had referred to sizes of units that were not accurate" and were off by as much as 25%. Andrew Wright further testified that David Pisor had "haphazardly" allowed "35 contracts to be written in such a [manner] that we didn't know what we were selling at what price" and that John Mullen "basically shirked his responsibilities \*\*\* by allowing David Pisor to run roughshod over him and do whatever David Pisor wanted to do."

¶ 27 Defendants argued that Andrew Wright's deposition testimony established that he used his business judgment to act in what he thought was the best interest of both Wright Management, LLC, and Sheridan Road, LLC, to terminate the aforementioned contracts. Defendants argued that Andrew Wright's conduct in this case was privileged and, therefore, that summary judgment should be granted on the tortious interference counts.

¶ 28 Defendants also argued that plaintiffs had failed to establish any of the elements for an equitable accounting and, therefore, summary judgment on those counts should be entered.

¶ 29 Plaintiffs filed a response to defendants' motion for summary judgment, arguing that Andrew Wright was not a party to the contracts at issue but, rather, that he was a third-party who was subject to liability for tortiously interfering with said contracts. Plaintiffs also argued that a question of material fact existed as to whether Andrew Wright's conduct was unjustified or malicious so as to overcome his claim of privilege. In support, plaintiffs attached only the emails between Andrew Wright, David Pisor, John Mullen and Mike Golden discussed *supra*. Finally, plaintiffs argued that they had established their entitlement to an accounting based on defendants' breach of their fiduciary

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duties.

¶ 30 The circuit court granted summary judgment for defendants on counts IV through VI (for tortious interference), finding that Andrew Wright was a party to the contracts that 6030 Sheridan Road, LLC, entered into with Wright Management, LLC, with @ Properties, LLC, and with Grady Campbell, Inc. and, therefore, that the tortious interference counts cannot stand. The circuit court also granted summary judgment on the tortious interference counts on the basis that Andrew Wright's complained-of conduct was privileged. The circuit court granted summary judgment for defendants on counts II and III (for an equitable accounting against Andrew Wright and James Wright, respectively), finding that plaintiffs had failed to file a responsive pleading to defendants' motion for summary judgment on those counts. The circuit court also found "[t]here exists no legal basis to assess liability against [d]efendants in favor of [p]laintiffs and affording relief in the form of an accounting is not justified."

¶ 31 Plaintiffs filed this timely appeal from the order granting summary judgment for defendants on counts II through VI of their verified-amended complaint.

¶ 32 III. Analysis

¶ 33 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmovant, reveal that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *State Farm Fire and Casualty Co. v. Martinez*, 384 Ill. App. 3d 494, 497-98 (2008). Review is *de novo*. *Id.* at 498.

¶ 34 First, we address the grant of summary judgment for Andrew Wright on counts IV through

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VI of plaintiffs' verified-amended complaint, which were labeled "tortious interference with business relationship." We have recognized the torts of intentional interference with contractual rights and intentional interference with a business expectancy "both stemming from the recognition that a person's business relationships constitute a property interest which should be protected from unjustified interference. [Citations.] The elements of the former include: (1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of the contract which causes a subsequent breach by the other; and (4) damages [citation]; while the elements of the latter tort include: (1) the existence of a valid business expectancy by plaintiff; (2) the defendant's knowledge of the expectancy; (3) the defendant's intentional and unjustified interference which prevents the realization of the business expectancy; and (4) damages." *Chapman v. Crown Glass Corp.*, 197 Ill. App. 3d 995, 1004-005 (1990).

¶ 35 Plaintiffs contend on appeal that we should consider counts IV through VI of their verified-amended complaint as having pleaded the tort of intentional interference with contractual rights (as opposed to the tort of intentional interference with business expectancy) and that the circuit court erred in granting summary judgment for Andrew Wright on those counts. Defendants do not dispute that plaintiffs' cause of action in counts IV through VI alleged Andrew Wright's intentional interference with respectively, the contract between Wright Management, LLC, and Sheridan Road, LLC (count IV); Sheridan Road, LLC, and @ Properties, LLC (count V); and Sheridan Road, LLC, and Grady Campbell, Inc. (count VI), but they contend summary judgment was appropriately entered thereon because Andrew Wright was a party to all three of these contracts in which he allegedly

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tortiously interfered. See *Douglass Theatre Corp.*, 288 Ill. App. 3d at 884 (a party cannot tortiously interfere with its own contract) and *Bass*, 328 Ill. App. 3d at 503-04 (a party cannot tortiously interfere with the business expectancy created by that contract).

¶ 36 We disagree that Andrew Wright was a party to the contracts. Wright Management, LLC, and Sheridan Road, LLC, are legal entities distinct from Andrew Wright (805 ILCS 180/5-1(c) (West 2002)) and they can sue and be sued (805 ILCS 180/1-30(1) (West 2002)), incur liabilities, and make contracts (805 ILCS 180/1-30(7) (West 2002)). Pursuant to their authority to make contracts, Wright Management, LLC, and Sheridan Road, LLC, entered into the real estate development contract; Sheridan Road, LLC, and @ Properties, LLC, entered into the contract to facilitate sales of the condominium units; and Sheridan Road, LLC, and Grady Campbell, Inc. entered into the contract for advertising materials. Andrew Wright was not a signatory to any of these three contracts in a personal capacity. He signed the real estate development contract between Wright Management, LLC, and 6030 Sheridan Road, LLC, only in a representative capacity on behalf of Wright Management, LLC; and he did not sign the other two contracts. Andrew Wright is not liable for the debts, obligations, and liabilities arising out of the contracts entered into by Wright Management, LLC, and Sheridan Road, LLC. 805 ILCS 180/10-10 (West 2002). Accordingly, he is not a party thereto. The circuit court erred in granting summary judgment for Andrew Wright on the tortious interference with contract counts based on his status as a party to the three contracts at issue here.

¶ 37 Defendants next contend that, notwithstanding the circuit court's error in finding that Andrew Wright was a party to the three contracts at issue here, we should affirm the circuit court's grant of summary judgment based on its finding that Andrew Wright was conditionally privileged to interfere

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with those contracts. "Courts will recognize a privilege in intentional interference with contract cases where the defendant was acting to protect an interest which the law deems to be of equal or greater value than the plaintiff's contractual rights." *HPI Health Care Services*, 131 Ill. 2d at 157. Our supreme court has recognized a conditional privilege for corporate officers and directors to use their business judgment and discretion on behalf of their corporations. *Id.* at 157. The supreme court based the existence of the privilege on the recognition that the duties owed by corporate officers and directors to their corporation's shareholders outweighs any duties they owe to the corporations' contract creditors. *Id.*

¶ 38 The supreme court has not had cause to consider whether officers of an LLC are similarly privileged to interfere with their company's contracts; the issue is one of first impression. As an owner and officer of Wright Management, LLC with managerial authority, Andrew Wright owes fiduciary duties of care and loyalty to his company that are similar to the fiduciary duties owed by a corporate officer and director. See 805 ILCS 180/15-3 (West 2002). The fiduciary duty of care necessarily requires the officer of an LLC to exercise sound business judgment on behalf of his company, just like a corporate officer must exercise sound business judgment on behalf of his corporation. See *Panter v. Marshall Field & Co.*, 646 F. 2d 271, 293 (1981) ("[d]irectors of corporations discharge their fiduciary duties when in good faith they exercise business judgment in making decisions regarding the corporation.") We hold that the fiduciary duties owed by Andrew Wright to Wright Management, LLC, which include the exercise of sound business judgment on behalf of the company, are at least of equal value to plaintiffs' contractual rights and, as such, that he was conditionally privileged to interfere with those contracts in order to further the company's

interests in accordance with his fiduciary duties.

¶ 39 Where the conduct of a defendant in an intentional interference with contract action was conditionally privileged, plaintiffs bear the burden of overcoming the privilege by pleading and proving that defendant's conduct was unjustified or malicious. *HPI Health Care Services*, 131 Ill. 2d at 156. "The term 'malicious,' in the context of interference with contractual relations cases, simply means that the interference must have been intentional and without justification." *Id.* at 156-57. A defendant acts maliciously and without justification when he engages in conduct that is "totally unrelated or even antagonistic to the interest which gave rise to defendant's privilege" or where he acts solely for his own gain or solely for the purpose of harming the plaintiff. *Id.* at 158.

¶ 40 Plaintiffs contend they have presented a factual basis that Andrew Wright's conduct was unjustified and malicious necessitating reversal of the grant of summary judgment. See *Chatham Corp. v. Dann Insurance*, 351 Ill. App. 3d 353, 357-58 (2004); *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1024-25 (1992) (plaintiffs need not prove their case in response to defendants' motion for summary judgment, but instead must present a factual basis arguably entitling them to a judgment and cannot rely on the pleadings alone to raise the material issue of fact). That factual basis consists only of the emails between Andrew Wright, David Pisor, John Mullen, and Mike Golden (cited above) allegedly showing that Andrew Wright acted solely for his own gain when he maliciously interfered with the three contracts at issue in order to stop @ Properties, LLC, and Sheridan Road, LLC, from referring purchasers of condominium units to mortgage companies other than Aadus Bancorp (in which he had a personal financial interest.)

¶ 41 Review of the emails<sup>2</sup> (which were attached to plaintiffs' verified-amended complaint and to their response to defendants' motion for summary judgment) shows that Andrew Wright disagreed with David Pisor and Mike Golden as to the relative job-performances of @ Properties, LLC, and Aadus Bancorp. The emails from Mr. Pisor and Mr. Golden indicate that Mr. Pisor approved of the work performed by @ Properties, LLC, and its agent, Mr. Golden, but that both Mr. Pisor and Mr. Golden were dissatisfied with Aadus Bancorp's failure to offer buyers better programs and rates. Mr. Pisor and Mr. Golden indicated their dissatisfaction with Aadus Bancorp stemmed from: Aadus Bancorp personnel being late to two meetings with prospective buyers; an Aadus loan officer upsetting a buyer by referencing his history of making late payments; Aadus' failure to give a buyer a "straight answer" to a question; and an Aadus loan officer offering an interest rate of 7.25% to a buyer with a credit score in the 700's who was making a 20% down payment. There is no indication in the emails as to the interest rate that should be offered to a buyer with a credit score in the 700's.

¶ 42 In contrast to Mr. Pisor and Mr. Golden, the emails from Andrew Wright indicated his repeated disapproval of @ Properties, LLC's job performance, based on his first-hand knowledge of Mr. Golden's failure to put in the required 40-hour work weeks as well as his calculations that \$800,000 could be saved if the contract with @ Properties, LLC, was terminated. Mr. Wright's emails also indicated his insistence that the programs Aadus Bancorp had put together were

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<sup>2</sup>Defendants argue that the emails were inadmissible as hearsay and, therefore, may not be considered on summary judgment. See *Douglas v. Muhlenfeld*, 191 Ill. App. 3d 791, 799 (1989). However, the record indicates plaintiffs authenticated the emails through the affidavits of John Mullen and David Pisor in which they testified that the emails were kept in the regular course of 6030 Sheridan Road, LLC's, business and were true and correct. Defendants did not move to strike the affidavits and so have waived review of their sufficiency. See *Nielsen-Massey Vanillas, Inc. v. City of Waukegan*, 276 Ill. App. 3d 146, 155 (1995).

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"impressive" and at least the equal of programs offered by entities other than Aadus, and that Mr. Golden and @ Properties, LLC, were ill-serving Wright Management, LLC, and 6030 Sheridan Road, LLC, by directing purchasers to other mortgage companies. Mr. Wright also noted that Mr. Pisor had failed to specifically state what he wanted from Aadus Bancorp that had not been provided.

¶ 43 There is no evidence in any of the emails that Mr. Wright's disapproval of @ Properties, LLC, and his support of Aadus Bancorp, was for other than his stated reasons, or that his intent was to act solely for his own gain or for the purpose of harming plaintiffs. There is no reference in the emails to any type of objective proof supporting the allegations in the verified-amended complaint that Aadus Bancorp offered prospective buyers mortgage rates that were above the market rates or that Mr. Wright's continued insistence on Aadus Bancorp's participation in the project can be considered evidence of his malice.

¶ 44 Further, we note that the real estate development contract between Wright Management, LLC, and 6030 Sheridan Road, LLC, which was signed by Mr. Wright, Mr. Pisor, and Mr. Mullen on behalf of the companies, expressly provides that Aadus Bancorp would be an approved lender and one of two onsite mortgage lenders at the project. This contractual provision justified Mr. Wright's insistence that @ Properties not exclude Aadus Bancorp from the project. Also, plaintiffs have failed to set forth any evidentiary material indicating a specific mortgage lender that would have provided better rates and programs than the ones provided by Aadus Bancorp.

¶ 45 In sum, plaintiffs have failed to meet their burden of providing a factual basis that Andrew Wright acted maliciously when he decided to induce a breach of the real estate development contract based on @ Properties, LLC's failure to provide competitive services, and based on 6030 Sheridan

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Road, LLC's and @ Properties, LLC's failure to direct buyers to Aadus Bancorp. Similarly, plaintiffs have failed to meet their burden of providing a factual basis that Mr. Wright's interference with 6030 Sheridan Road, LLC's contracts with @ Properties, LLC, and with Grady Campbell, Inc. were unjustified or malicious. Accordingly, we affirm the grant of summary judgment on the tortious interference counts IV through VI.<sup>3</sup>

¶ 46 We also affirm the granting of summary judgment on the equitable accounting counts II and III. To establish their right to an equitable accounting, plaintiffs must show one of the following: "a breach of a fiduciary relationship with the person required to account, the need for discovery, fraud, or the existence of complex mutual accounts." *Kurtz, v. Solomon*, 275 Ill. App. 3d 643, 653 (1995). The circuit court was correct in finding that plaintiffs have failed to show any of these elements, and accordingly we affirm the grant of summary judgment in favor of defendants.

¶ 47 For the foregoing reasons, we affirm the circuit court.

¶ 48 Affirmed.

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<sup>3</sup>In their reply brief, plaintiffs raise a new argument concerning the circuit court's granting of their motion to deem certain facts admitted. Plaintiffs waived review failing to raise the argument in their appellant's brief. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).